could be varied from time to time and the company would appear to have had no controlling interest or, indeed, any other interest in the society itself and, in fact, at the hearing of the action the company took no part in the argument and expressed its willingness to retire. Finally, in this connection, it should be observed that in exercising its discretion to intervene by winding up the society the court seems to have placed great reliance on the fact that the employer-company had ceased to carry on business and that the society was also insolvent. The substratum on which the society was founded had therefore, ceased to exist. These factors are non-existent in the case of the present fund.

In the present case the members of the fund take no part, as members, in the administration of the fund which has been left in the sole charge of the trustees who are to administer it under and in accordance with the rules. In fact the members have no say in its administration at all and no provision whatsoever exists for them to meet like members of any ordinary society, to pass resolutions of any kind or to vary the rules. In fact the members do not have any executive body or committee to manage their affairs nor are they associated with one another in such a way as to give them even the semblance of an association or society of any kind. How they can successfully claim to be members of a society seems to me to be beyond comprehension.

The fund itself is regulated by rules which bind members. In fact employees before becoming members are required to sign an undertaking to be bound by the trust deed and the rules. Moreover the trustees have a sole discretion in the matter of admitting an employee to membership.

Contributions received from a member are credited to his "A" account and contributions by the employer to his "B" account.

The employers have a lien over his "A" account for any debts due by a member or losses caused by his fraud or negligence, but the trustees have an absolute and uncontrolled discretion, notwithstanding the rules providing in certain cases, for forfeiture of his "B" account to pay him the whole or part of it. Further, members have no right to inspect the books of the employers or trustees though annual statements are required to be supplied to them of the amounts standing to their credit.

Save in accordance with the rules, no member has any right to the amounts standing to his credit nor does any member have power to assign his interest in the fund.

Provisions such as those make it quite clear in whom the control over the fund lies particularly when regard is had to rule 26 which categorically states that in all matters the decision of the trustees or of the company, as the case may be, shall be final.

In view of these matters it is impossible to regard this fund as a society which can be dissolved at the request even of the vast majority of its members. It is a trust in the nature of a superannuation trust for the benefit of members on their retirement.

As rule 14 provides, no member *so long as he is in the service of the employer* shall have the right to withdraw any of the amounts standing to his credit in the fund and under rule 15 distribution can only take place in the circumstances therein described.

I know of no rule of law or principle of equity which empowers a court to dissolve a trust in circumstances where only a majority of beneficiaries require their shares to be paid out to them.

I am of the opinion that this fund can be wound up only in the circumstances set out in rule 24 or perhaps in accordance with the *unanimous* vote of all its members. On the latter I need express no opinion for objections have been filed by some of the members against the termination of the fund and the realisation of its assets.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Chor Pee & Hin Hiong; Rodyk & Davidson.*

MOHAMED ABDULLAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) August 6, 1965]

[Penang — Criminal Appeal No. 9 of 1965]

Customs and Excise — Dutiable goods — False declaration — Whether declaration required by Ordinance — Place of import — Customs Ordinance, 1952, ss. 75(1) & 129(1)(a) and (2).

The appellant a clerk in the forwarding department of a lighterage and stevedoring company signed a set of customs declaration forms as agent for the importers. The declarations were signed by the appellant at Penang and tendered to the customs at Butterworth by the driver of the lorry. The declaration was found to be incorrect and the appellant was charged and convicted for making a false declaration. On appeal it was argued that: (a) the declaration was not one required by the Ordinance for the purposes of section 129(1)(a) of the Ordinance and (b) the "Customs Warehouse, Butterworth" specified in the charge was not a place of import within the proviso to section 75 of the Customs Ordinance in the absence of evidence to that effect.

Held: (1) the declaration was one required by the Ordinance for the purposes of section 129(1)(a) of the Customs Ordinance, 1952, as it was a declaration enjoined by the proviso to section 75(1) of the Ordinance;

(2) that Butterworth was the place of import for the purposes of section 24 of the Customs Ordinance,

1952, by virtue of Part XVII of the Ordinance which set out the special provisions dealing with Penang.

Case referred to:—

(1) *Public Prosecutor* v. *Yong Nam Seng* [1964] M.L.J. 85.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kean Siew for the appellant.

Abdullah bin Ghazali (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J.: The appellant was convicted by the learned president at Butterworth Sessions Court of an offence under section 129(1)(a) the Customs Ordinance, 1952, and fined $125. Forfeiture of the transistor radios, the subject-matter of the declaration, was ordered.

Briefly the appellant, a clerk in the forwarding department of a local lighterage and stevedoring firm, signed a set of customs declaration forms together with other ancillary documents, purportedly as agent for the importers, Tone Radio Co. of Alor Star. In his declaration, he stated two items of 100 set of Time Radio Transistors to be medium wave band transistor. A single wave band radio attracts duty of 5% but two or more wave band radios are chargeable with a duty of 25%. The goods were then transported by lorry driven by D.W.2 to whom the appellant also handed the set of customs declaration forms. When checked at Butterworth, the said two items were found to be 3 wave band and 2 wave band radios. The appellant pleaded that he was busy that morning and further that he had hoped for assistance from customs officers to ensure that the matters stated in the declaration form tally with the goods. He further pleaded that he had given specific instructions to the lorry driver to phone him if any mistake was detected. The learned president quite rightly held that subsection (2) of section 129 of the Ordinance, which reads:

"When any such declaration....has been proved to be untrue or incorrect....in whole or in part, it shall be no defence to allege that such declaration....was made or used inadvertently or without criminal or fraudulent intent or that the person signing the same, was not aware of, or did not understand the contents of, such document".

provided the answer to the appellant.

The petition of appeal set out six grounds none of which was seriously argued. Instead counsel for the appellant embarked on new grounds, namely, whether the declaration was one "required by this Ordinance" for the purposes of section 129(1)(a) and whether the place "the Customs Warehouse, Butterworth" specified in the charge was a "place of import" within the proviso to section 75 of the Customs Ordinance in the absence of evidence to that effect. It is not disputed that the declaration was signed by the appellant, which declaration was tendered to the customs at Butterworth by D.W.2 the driver of the lorry engaged by the appellant to transport the radios to the importer. Following Azmi J. in *Public Prosecutor* v. *Yong Nam Seng & Anor.*[1] I am satisfied that this is a declaration required by the Ordinance. It is a declaration enjoined by the proviso to section 75(1). I further hold that Butterworth is a place of import for the purposes of section 24 of the Ordinance by virtue of Part XVII of the Ordinance which set out the special provisions dealing with Penang.

One observation I would make is that the charge should have referred to the making of the declaration rather than the signing which was at Penang. However this error has not occasioned a failure of justice. For the reasons above, I dismiss this appeal.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*

HO YING CHYE v. TEH CHEONG HUAT

[O.C.J. (Raja Azlan Shah J.) August 6, 1965]

[K.L. — Civil Suit No. 131 of 1964]

Landlord and Tenant — Claim for possession by new owner — Tenant at will — Termination.

Land Code, ss. 96 and 116 — Whether agreement attempt to pass interest in land — Agreement not registered — Whether enforceable as a contract — Tenancy at will.

The plaintiff claimed possession of premises which were occupied by the defendant. The premises were originally purported to be let by the then landlord for a period of two years from September 1, 1957. The premises were subsequently assigned to the defendant. The agreement was not in the form of Schedule XXII to the Land Code and therefore could not and was not registered under the Land Code. The plaintiff who had become owners of the property gave notice to quit and on the expiry thereof claimed possession. The defence relied on by the defendant was that in view of the valuable consideration given to the previous owner it was agreed that the tenancy would not be disturbed.

Held: (1) the agreement in this case was an attempt to pass an interest in the premises and as it was not registered under the Land Code it was unenforceable;

(2) the agreement in this case would not be construed as an enforceable contract as on the proper construction of the agreement it was an attempt to pass an interest in the premises;

(3) in the circumstances the defendant was a tenant at will and as such his tenancy could be determined by a demand for possession.

Cases referred to:—

(1) *Haji Abdul Rahman and others* v. *Mahomed Hassan*, [1917] A.C. 209; 1 F.M.S.L.R. 290, P.C.

(2) *Margaret Chua* v. *Ho Swee Kiew & Ors.* [1961] M.L.J. 173.

(3) *Doe d. Price* v. *Price* (1832), 9 Bing. 356.

(4) *Fox* v. *Hunter-Paterson* [1948] W.N. 399.